

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>RANDY SIEGRIST</b>	)	
Claimant	)	
VS.	)	
	)	
<b>TIME OUT SPORTS LOUNGE &amp; GRILL</b>	)	Docket No. 190,854
Respondent	)	
AND	)	
	)	
<b>KANSAS RESTAURANT &amp; HOSPITALITY ASSOCIATION SELF INSURANCE FUND</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from a March 27, 1996, Award entered by Administrative Law Judge Jon L. Frobish.

**APPEARANCES**

Claimant appeared by his attorney, Jerry L. Soldner of Garden City, Kansas. Respondent and its insurance carrier appeared by their attorney, Andrew E. Busch of Wichita, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The Appeals Board considered the record and adopted the stipulations listed in the Award. In addition, the Appeals Board considered the transcript of the deposition of Pedro A. Murati, M.D., taken March 1, 1996, on behalf of the respondent and its insurance carrier.

**ISSUES**

The Administrative Law Judge denied claimant an award of compensation finding claimant had failed to prove he met with personal injury by accident on the date alleged and that the injury arose out of and in the course of his employment with respondent. Those are the issues now before the Appeals Board.

The parties agreed that if the Appeals Board were to decide those issues in claimant's favor, then the matter should be remanded to the Administrative Law Judge for a determination of the remaining issues that were not reached by the Administrative Law Judge in the original Award.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the Award entered by the Administrative Law Judge should be affirmed.

The controversy in this case surrounds the claimant's behavior following his alleged accident which was inconsistent with his allegations of injury. Claimant, a cook, contends that he injured his back lifting a roast from the oven. However, claimant completed his shift and thereafter remained at respondent's nightclub drinking and dancing for approximately one-and-a-half to two hours until closing. Claimant attempts to minimize the significance of his dancing following the alleged injury. He argues that the moderate exercise of dancing and the consumption of considerable alcoholic beverage operated to mask his symptoms. However, Butch Knight, one of the owners of the respondent nightclub, described claimant's dancing as "wild, rapid and everything is moving."

Furthermore, claimant had a history of back problems. Prior to the alleged accident, claimant had received chiropractic treatment for symptoms similar to those which he now attributes to the alleged accident at work. Based upon those prior records, Dr. Murati opined that claimant's disc herniation occurred before the date that claimant is claiming it occurred. Dr. Murati also pointed out that claimant gave him an inaccurate history which failed to disclose his prior low back and radicular symptoms and his having obtained treatment for same less than two months before the alleged accident date.

The findings of fact and conclusions of law as enumerated in the Award by the Administrative Law Judge are found to be accurate and are hereby adopted by the Appeals Board. The Appeals Board agrees that claimant has not sustained his burden of proof that his injury resulted from an accident which arose out of and in the course of his employment.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish, dated March 27, 1996, should be, and is hereby, affirmed in all respects and the orders contained in said Award are hereby adopted by the Appeals Board as its own.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Jerry L. Soldner, Garden City, KS  
       Andrew E. Busch, Wichita, KS  
       Jon L. Frobish, Administrative Law Judge  
       Philip S. Harness, Director